

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INTELLIVISION, a Joint Venture,	:	Civil Action No. 07 CV 4079 (JGK)
	:	ECF Case
Plaintiff,	:	
	:	DECLARATION OF
- against -	:	ROBERT S. LANDY IN
	:	SUPPORT OF MICROSOFT'S
MICROSOFT CORPORATION,	:	MOTION TO DISMISS
	:	INTELLIVISION'S AMENDED
Defendant.	:	<u>COMPLAINT</u>
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I, Robert S. Landy, hereby declare, under penalty of perjury:

1. I am a member of the Bar of the State of New York, admitted to practice before this Court, and am an associate with the firm of Sullivan & Cromwell LLP, counsel for defendant Microsoft Corporation ("Microsoft") in the above-captioned matter. I make this Declaration in support of Microsoft's Motion to Dismiss Intellivision's Amended Complaint, in particular, to place certain documents before the Court.

2. Attached hereto as Exhibit 1 is a true and correct copy of a Microsoft press release, dated April 6, 1997, entitled "*Microsoft to Acquire WebTV Networks*" stating in part, "WebTV Networks currently licenses its WebTV Reference Design for set-top boxes to two consumer electronics manufacturers – Philips Consumer Electronics Co. and Sony Electronics Inc."

3. Attached hereto as Exhibit 2 is a true and correct copy of a Microsoft press release, dated December 13, 1999, entitled "*Revolutionizing Television*

for Satellite Viewers” stating in part, “[i]magine hitting the pause button to answer the phone while watching the latest episode of your favorite show, then resuming the show exactly where you left off. Or replaying an exciting triple play during a live baseball game without missing what happens next. Or automatically programming your television with the touch of your remote control to record every movie that your favorite actress appears in during the coming week.”

4. Attached hereto as Exhibit 3 is a true and correct copy of a Microsoft press release, dated January 6, 2000, entitled “*WebTV Networks Takes the Lead in Personal TV Services*” stating in part, “[d]emand for Microsoft WebTV Network Personal TV Technology is exceptionally strong, with over 100,000 DISHPlayer customers able to pause live TV. And by subscribing to WebTV Personal TV Service, these satellite customers also get ultimate choice and control over their TV viewing experience with features such as digital video recording, instant replays and an interactive electronic program guide.”

5. Attached hereto as Exhibit 4 is a true and correct copy of a Microsoft press release, dated June 12, 2000, entitled “*Microsoft, DIRECTV and THOMSON Multimedia Join Forces Make Television More Personal and Interactive*” starting in part, “UltimateTV, a new offering from Microsoft WebTV Networks, Inc., is the culmination of five years of developing and delivering enhanced-TV services. This expansive new solution integrates digital video recording, interactive television and Internet features, creating a unified user experience.”

6. Attached hereto as Exhibit 5 is a true and correct copy of a Microsoft press release, dated October 26, 2000, entitled “*Microsoft WebTV Networks Announces Pricing for UltimateTV Service*” stating in part, “Microsoft WebTV Networks, Inc. announced today that for \$9.95 a month, UltimateTV service subscribers will have up to 35 hours of digital video recording (DVR), the ability to pause live TV, interactive television and three hours of Internet access.”

7. Attached hereto as Exhibit 6 is a true and correct copy of a Microsoft press release, dated January 6, 2000, entitled “*As CES Kicks Off, Rick Belluzzo Previews Bill Gates’ Keynote Address and Highlights New Microsoft Technologies for the Home*” stating in part, “UltimateTV gets its official debut at CES during Bill’s keynote speech. . . . With UltimateTV, you’ll be able to store up to 35 hours of satellite programming, access the Internet and take advantage of the coming wave of interactive television shows. You’ll also be able to pause and resume a live broadcast.”

8. Attached hereto as Exhibit 7 is a true and correct copy of the transcript of Bill Gates’ January 6, 2001 keynote address at the 2001 Consumer Electronics Show in Las Vegas, Nevada. There is a demonstration of the product called UltimateTV at pages 12 and 13 of the transcript.

9. Attached hereto as Exhibit 8 is a true and correct copy of a printout of the results of a search on the Lexis “Mega News, All” database for all articles containing the term “UltimateTV” between June 12, 2000 and January 16, 2001. The search resulted in 240 articles, of which 235 expressly refer to Microsoft’s UltimateTV

product. The results appear in reverse chronological order. Microsoft would be happy to provide copies of these articles to the Court if that would be of assistance.

10. Attached hereto as Exhibit 9 is a true and correct copy of a printout of the results of a search on the Lexis “Mega News, All” database for all articles containing the terms “Microsoft” and “WebTV” and “DVR” or “PVR” between June 12, 2000 and January 16, 2001. The search resulted in 232 articles, of which 61 expressly refer to Microsoft’s UltimateTV product. The results appear in reverse chronological order. Again, Microsoft would be happy to provide copies of these articles to the Court if that would be of assistance.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 17, 2007

/s/

Robert S. Landy (RL 9873)